

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL LOUKAS,

Plaintiff-Appellant,

v

JAMES HOARE,

Defendant-Appellee.

UNPUBLISHED

August 16, 2007

No. 270825

Oakland Circuit Court

LC No. 2003-052524-CZ

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted from a circuit court order denying his motion for a writ of habeas corpus. We affirm in part, reverse in part, and remand.

Plaintiff, a state prisoner, sued defendant for breach of contract and legal malpractice related to defendant's alleged failure to file a motion on plaintiff's behalf. The trial court originally dismissed the action as a result of plaintiff's failure to appear for trial. However, this Court vacated that order and directed the trial court to consider plaintiff's motion for a writ of habeas corpus. *Loukas v Hoare*, unpublished memorandum opinion of the Court of Appeals, issued March 21, 2006 (Docket No. 259006). On remand, the trial court denied the writ and stayed the case pending plaintiff's release from prison.

The decision whether to issue a writ of habeas corpus ad testificandum is committed to the discretion of the trial court. *Hall v Hall*, 128 Mich App 757, 761-762; 341 NW2d 206 (1983). A trial court abuses its discretion "when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

Given plaintiff's history of violent offenses and his escape convictions, we agree with the trial court's conclusion that the security risk presented by plaintiff and the costs associated in guarding and transporting him warranted a denial of the writ. However, "[i]f the court decides to deny the writ, it should consider other possibilities for presenting the testimony. It may be satisfactory to grant the plaintiff leave to testify by deposition." *Hall, supra* at 762. Other alternatives could include allowing plaintiff to appear by telephone or videoconference or, if the parties consent, issuing a judgment on stipulated facts. Staying the case pending the plaintiff's release from prison is another alternative, *id.*, but is only appropriate if the plaintiff is likely to be released from prison "within a reasonable time," *Heidelberg v Hammer*, 577 F2d 429, 431 (CA

7, 1978). When the plaintiff “will be incarcerated for many more years, as in this case, postponement of the trial is not a satisfactory solution.” *Id.*; see also *Martin v Potter*, 635 F Supp 645, 647 (D VI, 1986), aff’d 877 F2d 56 (CA 3, 1989) (noting that the postponement of trial was not a suitable alternative to issuance of a writ where the plaintiff had “not served the majority of his sixty year sentence.”). Because plaintiff will be incarcerated for the next 13½ to 44 years, we conclude that the trial court abused its discretion in staying the case until plaintiff’s release. Accordingly, we affirm the trial court’s decision not to grant the writ, but reverse that aspect of the trial court’s order staying the case and remand for consideration of other alternatives for affording plaintiff his right of reasonable access to the courts.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly